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11. People's Law, Development and Justice

Introduction

India has a rich diversity of community institutions dealing with disputes. But the professional elite—politicians and lawmen among these—have continuously and systematically ignored them, as wayside relics destined to disappear in the great March to Progress. Politicians and lawmen behave as if these diverse dispute institutions did not exist; when reminded of their existence they remain ignorantly derisive. The reasons for this are many and complex. One of these is the arrogant elite assumption that there is only one right way of doing law and justice and that is the way provided by a highly professionalized, technocratic model of legal process. Some believe that this model is the only right one because they think it is 'modern', 'secular' and 'rational' as compared with the model of popular justice, without lawyers, without rules, without institutional sanctions. They say that the popular model of justice is anti-modern, anti-secular and irrational, and not in consonance with the values of the constitution. They further say that even if some popular adjudicative tribunals work fairly and effectively, this cannot warrant or justify an assumption that such models or modes will work universally through India. They, therefore, maintain that development (in the sense of fostering constitutional values of equality, liberty, dignity, fraternity, justice, secularism and individualism) can only be attained by displacing these institutions of popular justice or by reducing their scope to routine and trivial tasks.

Of course, this attitude is not wholly fostered by dedication to constitutional values. Many material interests of the professional elite are also at stake; any frank acceptance of the viability of lay and deprofessionalized justice strikes at established monopolies and oligopolies sanctified by the framework of a *laissez-faire* legal profession. Deprofessionalized, lay, community justice institutions threaten the very livelihood of a very substantial number of the operators of the India Legal System (ILS) (including lawyers, judges, draftsmen, law publishers and researchers, and bureaucrats with large rule-making powers). Constitutional values come in handy both as shield and sword to protect he tmaterial interests of these people against an assertion of a rival model of doing justice.

It is true that the "concentration on the formal and written law has distorted perspective of Indian lawyers and intellectuals" and has even led to "pretending that the law enforced in the unofficial panchayats is not law" (Srinivas, 1962 : 118). But this distortion arises, in part, from the material interests it subserves. It will be rectified only when it become clear to professional elites that their material interests are not jeopardized at all (or to any unacceptable extent) as they think they are by acceptance of validity and viability of indigenous institutions of doing justice. The medical establishment in India, including the pharmaceutical industry, has now recognized that systems of indigenous medicine do not so threaten their major material interests. Indeed, they have begun to find that in some cases recognition of these systems helps further promote their material interests. A parallel development with regard to legal establishments has yet to occur. For this to happen, we have to accept at the outset that there are systems of *people's law* in India as there are systems of *state law*.

People's Law: Problems of Conceptualization

One way in which we can begin towards a new consciousness of law (especially in a country like India) is to relate 'people's' law to 'state' law. One simple factor contributing to the vicissitudes of the law as an instrument of directed social change is that most excolonial societies of the Third World were (and remain) multilegal, possessing more than one legal system and legal 'culture'. The imported Western legal systems interacted in different ways with indigenous systems of administration of justice. Initially, the imported/inherited Western based legal systems were alien—both historically and existentially—to the people at large. This alienness may still persist (Dhagamwar, 1974) after most of these countries have become independent and yet have continued to operate with the received systems of law and justice whether as a matter of deliberate choice (in terms of the maxim "what is good for the elite is

good for the masses") or as historical hangover. There are close parallels here between the European 'reception' of the Roman law (Stone, 1966) and ongoing crisis of legality in the newly independent societies which have *twice* received the European law.

Of course, it is now being discovered *all over again* (there is no commandment in social sciences forbidding the reinvention of the wheel!) that all societies including those which are highly developed *are* multilegal—an insight unforgettable proffered sometime ago by Otto van Gierke, Eugen Ehrlich, Max Weber and others. The sociological literature of the sixties and seventies celebrates the return to this theme. It not merely stresses the inadequacies and inhumanities of the state law's 'assembly line' justice but also highlights the comparatively superior qualities of non-state, informal, people's law. All this indeed has come to a point that one hears of the "peaceful uses of anthropology" (Lowy, 1973:205) and creation of African type moot, in the suburbs of San Francisco! (Danzing and Lowy, 1975:685) *Amen*.

Interesting too is the semantic distinction (manipulation?). The Asian/African societies have 'tradition' and 'custom'. The same phenomenon is described for the developed societies differently as: "private government", "private sectors of law and justice", "informal law", "living law", and "people's law".

To return to the main point: the theme of plurality and multiplicity of legal systems is now well worn, although it is differentially assimilated by sociologists and jurisprudents. But the central perplexities remain. Can we describe group ordering of social relations, and group handling of social conflicts, outside the dominating frameworks of state authority and power as *law*? Too much intellectual energy has been dissipated over this question, but not over the counterquestion: why not? One suspects all this is highly ideological. The liberal democrats who have all along urged political pluralism as their fighting faith have forgotten their own message when they come to the law. The state (behaviourally, the bureaucracy and army) is only one of the many social groupings, howsoever imperious and dominating it may be. If the state, for its operations, needs a technique of social ordering, social control and institutionalization of conflict, namely, the law, so do the other non-state groups. I do not deny the importance for the liberal political thought of using the state as their 'punching bag'; nor do I deny (who can?) the increasing power of state over all other

groupings. But the latter exist; nay, sometimes they are even resilient. To refuse to conceptualize their regulatory systems as law (in any significant usage of that term) is to commit a kind of genocide by definition. If not that, at least, it is a goodbye to pluralism.

That hurdle over, there arise the more vexing ones of further conceptualization. Thought has moved here in dichotomous pairs: we hear of "state law", and "people's law", "official law" and "living law", "formal law" and "informal law", "private" and "public" legal systems, "national" and "local" law, and finally "high culture" and "low culture" law. Bases for classification here vary: in terms of origin ('state'/'people'), qualities ('formal'/'informal') scope (national/local), social acceptance (living/enforced) and cultural foundations (high culture/low culture).

One clear basis of differentiation is the presence of state power and authority (which is *not* omnipresent, witness for example the vicissitudes of the "state action" doctrine in the American constitutional law). This gives us two main *types* of legal systems in any society: those organized under the auspices of the state and those organized under the auspices of social groups *other* than the state. The state legal system (hereafter SLS), itself a large bundle of hundreds of state legal systems, simplified and abstracted, provides a kind of reference group for the conceptualization of non-state legal systems (NSLS). The NSLS in any society would have higher demographic presence than the SLS. Anyway, pending this kind of census enterprise, it is possible at least to say that the NSLS display substantial variations in origins, development, structure, process, efficiency and viability (*Pospisil, 1979: 97-126*). *Inter se* relations, and comparisons between (and among) the NSLS still represent an uncharted arena of investigation, both theoretically and empirically, when such investigations develop, a search for conceptual tools and organizing principles *other* than those furnished by the presence or absence of state power and authority may well become imperative.

Perspectives for the Study of Interaction between SLS and NSLS

The study of interaction between the NSLS and the SLS is of prime importance, at least for sociologists of law in the 'developing' countries. But it is equally important to prevent such study from becoming degenerate factology. Perhaps, an identification of perspectives may be useful. May we not study this interaction from social system, social actor, and social development perspectives?

Each needs some explaining.

On the social system perspective, the configuration called 'law' will now look different. Our universe becomes overpopulated, even congested. We would need to bring some order: identify the main 'types' of the NSLS; their relation to social structures (role, statuses, role-sets, status-sets, 'culture'). Having done that, we would need to re-explore the SLS in the same manner. Then only we may begin the task of correlating preferred SLS types with NSLS types. And this will need typification of interaction patterns.

Jargonistic, all this; but it is necessary. SLS/NSLS may be symbiotically co-existent; this is conceivable, though not likely. Or they may be related in terms of collaboration, reciprocity or the relation may be of antagonism. A relation of complementarity would exist with NSLS performing the very same law-jobs (which Karl Lewellyn so seminally identified) which the SLS strive to perform. (See Baxi, 1976[b]: 93-95). On the other hand, the NSLS may be in active antagonism with the SLS. The antagonism or conflict may be at the level of values as well as of interests. Conflict may be so acute as to generate hegemonial drives—NSLS may seek to eclipse or oust SLS or *vice versa*. There maybe loot and plunder—also disaster, as when state laws coopt the features, even institutions of non-state law through statutory adoption in an effort at hegemony (the state attempts to statutorize community dispute institutions through *Nyaya Panchayats* in India afford one striking example of this: *see* chapter, ten). Alternatively, there may be a 'mix' of complementarity and conflict in the relations between the NSLS and the SLS. This mix may well be a kind of division of social labour between state and the people. In a given law region, the NSLS may do all social control jobs save those of dealing with major crimes (e.g. murder), though theoretically there is no inherent reason for this division (as we shall see later). What is all this, one may ask, but a saga of social change?

The social actor perspective wants us, rightly, to look at human beings not just as systems. Curiously, or perhaps not so, man disappears almost altogether in social system/structure analysis: the actor, it is said, becomes the receptacle. He is at the "receiving end of the system", never at the giving end (Dawe, 1970:207). Even if that be not so, it is true that social systems *interact* only in the dark night of social scientist's soul; in real world, only people—human beings—interact. Berger and Luckmann have reminded us (1966:72):

> The institutions, with its assemblage of 'pre-programmed' action, is like the unwritten libretto of drama. The realization of the drama depends upon the reiterated performance of its prescribed role by living actors.

Take the man into account and the picture begins to look different. Now we find human beings in time and place using the norms, processes, and institutions of the SLS and NSLS for *their* choice-making and social action. The actor's values and interests (*not* those of the institution's or system's) guide our understanding here. Just one example will suffice. Recourse to the court-system of the SLS by Indians, villagers particularly, does not necessarily imply any acceptance of the values of the SLS or signify any bankruptcy of the resources and values of the NSLS (say, *panchayats*). Court recourse may merely be a strategy for conflict-handling (an input for more favourable outcome in extra-judicial handling of conflict). It may also be motivated by the desire to correct status-asymmetries in village society (Epstein, 1962 : 123-24) : or to wage status competition, not quite permissible within the NSLS networks (Rudolph and Rudolph, 1967 : 36-66). The result of such recourse may not signify any fundamental departure from the hierarchical, sacral value system of the Hindu society or any conformity with the 'modernistic', secular-rational goals of the constitutionally desired social order. This must remain an open question. What is not open to question, however, is the observation : that from the actor's perspective, adjudication may be "just one of the many contingencies in what is essentially a process of negotiation in a changing social environment" (Kidder, 1973:137).

The third perspective we identified is 'developmental'. We have already noticed the conceptions of 'development'. One way for the present, to go about—far from the best and yet better than any *a priori*, unilinear, ethnocentric ways—is to identify development aspiration in terms of constitutionally stated values and aspirations, relation of these with the political elite's policies and programmes and the translation of each or both into official policies and programmes. Identification of normative components of the elite espoused notions of 'development' and of development achievement in stream of time (which may involve, dialectically, reformulation not merely of strategies but also of goals) will then provide the foci of the study of development. If the blood-groups of aspiration and

achievement compare well, we have development. If not, we have problems : What went wrong? unintended effects? lack of legitimacy? lack of political will? lack of social learning? (development is indeed psycho-sociologically identifiable with a process of social learning in the direction of espoused values).

If we want to look at development from this standpoint, the study of the NSLS in interaction with the SLS, or indeed by themselves, would be of considerable help. The NSLS may reflect tenacity of social formations and values, these in turn displaying the 'folk' or people's notions of development as opposed to the definitions of the elite. Where these conceptions coincide, we may find different institutional pathways to the attainment of goals and values. Either way, we would be inviting reappraisal of both types of legal systems (state and non-state) in their developmental profiles.

Village Law and Justice in India

Let me plunge now into specifics of the Indian situation. In so far as the study of village law and justice is concerned, we have in India instead of cross-fertilization across disciplines the situation of cross-sterilization. Juristic preoccupation with the SLS has generally led to the belief that the NSLS are wayside relics of marginal importance and destined to disappear in the great March to Progress. Indeed, the general tendency has been to subsume studies of the NSLS (dispute institutions) under the rubric 'cultural' or 'legal' anthropology, an exotic field for a few specialists which a busy judge, lawyer, or legislator finds of little immediate relevance.

On the other hand, even legal anthropology has yet to win recognition in India as an integrated discipline. Social anthropologists have studied village life; but in the proliferating studies the focus is on kinship, caste, and now-a-days 'class'. It is incomprehensible but true that very little attention is paid to social conflicts and their management outside (or indeed even within) the main frames of caste and class. (But the landscape is, fortunately changing: *see, e.g*, Chakravarthy, 1975; Sharma, 1979). Law as a category of structural analysis is virtually absent. The state of art qualifies what follows by way of an overview of literature.

There seem to be four main types of NSLS in rural India. Generally, these are caste-based NSLS; community-based NSLS: tribal panchayats innovative, reformist NSLS. The distinction between caste and community NSLS is (as we will shortly see) relative. It is

based on the view that "most individuals in rural India have two sets of predominate social relations, one that ties them to a village community which may be viewed as a vertical set of ties and one that connects them horizontally to their *biradari* and *jati* (subcaste)". Each set of social relations has "norms that can be considered legal and 'individuals and groups possessing the socially recognized' authority to apply physical force to enforce them within the local communities" (Cohn, 1965:82). The community NSLS extend beyond the caste to the village unit itself, though patterns of caste dominance—or of power distribution—here intrude, sometimes to a point that a village panchayat becomes the very extension of dominant group government. The innovative/reformist NSLS are dispute institutions like the 'People's Court' (*Lok Adalat*) at Rangpur which are sponsored by acculturating agents or agencies, with the ideologies which centre upon the principle of generation of *Lokshakti* or people's power for social transformation, and which deny, or circumscribe, the state power (Baxi : 1976[b]).

The dominant form of the organization in each case is a set of dispute institutions called panchayats. Panchayats normally are a group of five people who hear and decide disputes mostly when they are summoned to do so and Sometimes on their own also. However, in each type of NSLS, the subject matters vary. Generally, caste (*jati*) panchayats deal with conflicts of interests and values within *jati*-groups, including factional alliances within those groups. Village or territorial panchayats deal with conflicts of interest cutting across caste factors, though those very factors may often play a crucial role in the 'resolution' of a particular conflict.

Jati panchayats vary enormously in structure and scope. Bernard Cohn has insightfully grouped the structure and scope of *jati* panchayats in terms of territorial units as well as patterns of caste dispersal and domination. His classification yields three types of *jati* NSLS: (*a*) villages with a small population of a single caste; (*b*) multicaste villages with single head (authority figure); and (*c*) multicaste village with a dominant caste (Cohn, 1965 : 83-98). It is clear that *jati* NSLS may have wide territorial reach in terms of aggregation of *jati* circles, so that it is not unusual to find as many as fifty villages falling within the scope of *jati* NSLS. The limits of the territorial reach are conditioned only by "the means and the speed of transportation" and "by the kinship radius of the conve-

nors" (Mandelbaum, 1966; 281). Equally clearly there is a federal component in *jati* NSLS and different levels of hierarchy (e.g. Cohn, 1959). The nature of the conflict or its importance to *jati* solidarity patterns may, however, involve the use of the highest collectivity of *jati* NSLS (panchayats comprised by as many as 20-25 villages).

Jati panchayats also show interesting variations in organization of power and authority. While these remain to be systematically studied, a mix of any of the following variables offers some clue to authority and sources of legitimation. The close correlation between age and wisdom provides one mix—the panchayats are often led by even composed of, such men. Esteem, reputation, integrity, and charisma provide another mix. Economic base, as related to social status (Weber's analysis of status-groups as distinct from class is still, despite its seminality, largely ignored in Indian studies) also invests power and authority in certain men. So does the status of being a faction leader. Although not so prevalent now, we cannot altogether ignore the hereditary or royal allocations of role and authority (*of* Cohn, 1965 : 85-90).

Jati NSLS primarily involve disputes and conflicts which are related to the maintenance of *jati* ranking (in terms of ritual axis of pollution and purity) and solidarity. Ritual lapses, marital relations, commission of polluting acts, sexual deviance, *inter se* land disputes, credit transactions, patron-client (*jajmani*) relations—all those fall typically within the range of *jati* NSLS.

As in the SLS, the *jati* NSLS involve application of pre-existing norms (contra Cohn, who says "there is, *apparently*, little question of what 'the law' is in panchayat proceedings' 1965: 91—emphasis added) as well as instant norm creation and norm innovation. (The distinction between norm-creation and norm-interpretation is, in most decisional processes, never *so* sharp as some *wish* it to be). The breach of pre-existing 'customary' law is always a major gradient in the convening of *jati* panchayats; indeed, *jati* NSLS sometime make law prior to occasions of adjudication. For example, it has been frequently noted that untouchable *jati* groups, in their desperate bid for social uplift, have adopted regulations "for whole sections of a caste forbidding practices believed to be responsible for their low status... Chamars are prohibited from removing dead cattle" (Cohn, 1965: 100 and the literature there cited).

There is general agreement that the processes of dispute handling,

howsoever complex, in *jati* and village panchayats share common features of informality, flexibility, democraticity, and decision-making (at least always in style if not in substance) by consensus. While the state law strives to attain justice *inter partes* through 'impartial' judges and elaborate procedures for ascertaining 'truth', indigenous dispute resolving institutions promote justice with notorious informality through village or caste notables who know the disputants personally. The adversary systems (broadly speaking) of the state law seeks to individualize justice; village law and justice seek collectivized justice. Village law and justice seek social group harmony through consensus, where both sides engage in give and take whereas state law, followed to its end, rests on 'winner-take-it-all' principle. The flexibility of *jati* and village panchayats consists in a wider sense of relevance, not the straitjacket notion of relevance. The village elders, it is often observed, assembled to hear one dispute will "discuss another which lies behind it" (Cohn, 1959; Rudolph and Rudolph : 1966). This is partly a function of democraticity—that is, free-wheeling public participation in the hearing process—of the proceedings—indeed an element fast disappearing in the state law systems. Indeed, democraticity has not been confined to random public 'say' but it has a distinctly egalitarian character. Mandelbaum observes, at least in relation to *jati* panchayats:

> The egalitarian aspect of the traditional panchayat seems to pose a paradox. The need for unanimous consent and the right of every man to be heard appear dissonant to the leitmotif of hierarchy.... The answer seems to be that most define a jati council as a council of peers ... even a poor man will speak if he feels moved to do so (1966 : 291).

While the substance of this account is correct, it remains ideal typical (since not all who recourse to ideal type conceptions are Max Webers, ideal types often degenerate into stereotypes). The prevalence of the so-called tradition of consensus in India needs very critical examination. On most vital issues, the appearance of consensus may well be a mask for domination. The style of consensual decision-making, cleverly manipulated, may legitimate a decision which, in substance, only serves dominant interests. One may

assume that in most situations consensus would be 'prefabricated', 'contrived' or 'manipulated'. Yet, all in all, in most of the foregoing respects, the ideology of the professional justice, its structure and process are thus at fundamental variance with those of the lay justice.

The *jati* and village panchayats have a repertoire of sanctions—which include fine, public censure, civil boycott, ostracism, and varied public opinion pressures by village notables and sometimes by predominant groups in the area. The *jati* panchayats, additionally, have the very potent sanction of 'outcasting' and 'excommunication', a weapon often blunted by activation of SLS which may regard this as criminal libel. Andre Beteille in his study of *cheri* panchayat (village panchayat) in Tanjore district village describes the range of sanctions thus:

> Fines are levied for a wide variety of offences. For petty thefts, cash fines of small amounts are levied. Higher fines are levied for adultery and other sexual offences. Rape is regarded as a very serious offence and a special punishment is imposed in addition to fines. The culprit has his face smeared with soot, a bucket containing mud is placed on his head, and he is made to go around the *cheri* (area) in this guise, while a drum is beaten along the route. This is considered the most degrading form of punishment (Beteille, 1965: 63-64).

Primitive? Strange? Maybe. But social stigmatizing is the essence of all sanctions: here it takes a culturally specific form, which is also highly functional. (Similar adaptations of social censure as sanction are to be found in the Russian law—e.g., the famous "windows of satire".) Apart from stigma, public expression of penitence, self-correction assurances also serve as sanctions.

One striking example of a new kind of sanction is provided by the *Lok Adalat* at Rangpur. When disputants are sent an "invitation" to join the meeting of the *Adalat*, the last paragraph of the notice reads: "You surely know (appreciate) that expensive and frequent visits to law courts are not in the interests of us poor farmers". One may conceptualize this kind of admonition as a sanctioning device itself. Indeed, in the inter-subjectivities of the villagers such a statement might imply that if a party does not even appear before the *Lok Adalat*, the *Adalat* itself may encourage

court action or, at any rate, it may not discourage such action. Conceptually, then, the threat of recourse to the instrumentality of the state legal system is itself stressed and apperceived as a sanction, whose very probability generates compliance. This is a rather unique phenomenon wherein the non-state legal system appropriates the intimidating paraphernalia of the state legal system to sustain and enhance its continual efficacy, viability, legitimacy and even hegemony. Of course, parallel processes may be perceived in conflict resolution through out-of-court settlement, private arbitration and other forms of mediation. But the striking peculiarity of the *Lok Adalat* summoning procedure is that it directly employs the threat of formal litigation as a self-conscious sanctioning process to an extent that the range of choices for alternate means of resolution is endeavoured to be effectively eliminated or at least minimized. This indeed is the very definition of 'force'. To the extent the threat to recourse to litigation *actually operates* to reduce parties' choice of action, we have surely an operation of sanction (Baxi, 1976[b]: 83-86).

The effectivity of sanctions is an empirical question, which has not been closely examined in relation to the NSLS. Recalcitrance is both conceivable and likely: its incidence is, however, unknown. Isolated examples also suggest that the dominant group members or resourceful persons can, by acts of defiance, occasion changes or bypassing or even momentary collapse of sanctioning processes. But, the overall strength of collective conscience or sentiment in the village (and caste) contexts cannot be gainsaid.

Conflicts of Value and Interest

The NSLS (especially the *jati* and village systems) no doubt reflect distinctive patterns of social organization and consciousness. The constitutionally desired (proclaimed) social order seeks to foster (in part) through the operation of the legal system the value of equality whereas the Hindu caste system is based on the principles of hierarchy, religiously and 'culturally' sanctified and legitimated. The Hindu society, in Andre Beteille's evocative words, is a harmonic system where inequality exists and is perceived to be legitimate whereas the constitution ushers in a *disharmonic* system: inequalities exist but they are no longer legitimate (1974: 196-97). Bernard Cohn has maintained this sort of contrast insistently:

> The adversary system has developed to equalize persons in court. To an Indian peasant, this is an impossible situation to understand. The Chamar knows that he is not equal to Thakur... the Thakur cannot be convinced in any way that the Chamar is equal, but the court acts as if the parties to the dispute were equal (Cohn, 1959).

It would be too much to say that equality is a new concept for Indian culture, as the foregoing sets of contrast do ultimately suggest. What is distinctive about the constitutional vision of equality is in fact a total assault on the pervasive principle of social stratification based on status (and therefore, mobility) ascribed at birth in a particular *jati*. The constitution abolishes untouchability, makes discrimination based on untouchability an offence; it forbids sex, caste, religion based discrimination and assures equality of opportunity in public employment. All this is done by way of assurance in the nature of justiciable fundamental rights.

Opposed to all this, of course, are the myths and philosophies of an old social order which (not unnaturally) continue to persist. As has been often observed, neither the untouchable in the village nor his high-caste Hindu master can really understand how they can be equal with each other. Discrimination, excommunication and outcasting continue. Women continue to be treated as beings of inferior status to men, markedly in the rural areas, although there are laws guaranteeing more or less equal succession rights for Hindu women, or prohibiting bigamy, or proscribing dowry. Wage-discrimination based on sex is notorious. The values of a resilient 'culture' are in constant struggle for hegemony over those of the constitution.

But conflicts of value go even deeper than those indicated by contrasts between state and non-state law. Professor R.S. Freed has presented one aspect of such conflicts in her study of village life in North India through the case of Maya. Maya, a married but illicitly pregnant girl, was killed by her father because he believed that his *Dharma* as father obligated him to do so for the spiritual well-being of her soul. The sooner her sinful phase in the cycle of births and deaths was terminated the better would her prospects be in the endless cycle of birth and rebirth. He reasoned, also, that Maya, if allowed to live would be excommunicated from the village

society and end up as a cheap urban prostitute, a life full of unmitigated misery. Everybody in the family and the village agreed—so much so that two of the kinsmen of Maya's father who were police constables did not do anything to activate legal process. The police visited the village twice but did nothing. Village law was here in sharp antithesis to state law; and the latter, more or less yields to the former (1971: 420-435). *Dharma* thus conceived, is the legitimating principle of this NSLS which diverges sharply from the democratic belief system sustaining the SLS.

Not all experiments in local law and justice raise perplexing philosophical conflicts as the case of Maya. Some illustrate merely unredressed forms of lynch-justice as the well documented case of the cowherd illustrates. The cowherd committed two 'sins': one of covertly cohabiting with a Brahmin's young *third* wife and his compounding this offence by leaving the Brahmin's house by the *front* door (instead of the back door, as befitted his status). He was first castrated and then killed for this 'sinful' behaviour; no official action followed (Gough, 1955: 40; Cohn, 1965:90). Examples of lynch-justice abound. These indicate the countervailing power of caste and local notables over the state legal system.

On the other hand, well-organized local legal systems may often almost altogether "oust" the state legal system and provide an almost idyllic alternative as is shown by *Lok Adalat* (People's Court) in Rangpur, North Gujarat—a tribal belt of about 1,000 villages mostly irradiated by the Sarvodaya (*lit.* uplift of all) ideology of *bhoodan* and *gramdan* (voluntary gifts of lands and villages for redistribution or common use).

Almost all disputes in the region are referred to the *Lok Adalat*. In the last 25 years, it has settled more than 25,000 disputes. The very fact that a case is brought before it often provided a ground valid enough for adjourning proceedings in official courts. Adjudication is done with substantial public participation: each session is attended by 300-400 villagers. The Court's decisions are rarely disobeyed. This is because of their intrinsic fairness and community involvement. In some ways, this Court achieves a quality of justice still sought for by the state legal system: for example, it more effectively protects women's equal rights of inheritance, matrimonial property, etc. The Court's criminal justice system already provides for effective compensation for the victims of crime which is still on the legislative anvil. Its rehabilitative

techniques are much more advanced in some respects: a murderer is 'punished' to look after the widow and minor children of the victim for a term of years under close supervision of the local community whereas his imprisonment in the official legal system would have rendered both families destitute.

The *Lok Adalat* experiment also illustrates the other dimension of relationship between the state and non-state legal system. Often, dispute institutions generate and sustain broad based leadership patterns which promote developmental activities—both economic and social. It was through his role as a mediator in village disputes that the leader of the *Lok Adalat*, Shri H. Parikh (an eminent *Sarvodaya* worker), attained legitimacy, and a degree of charisma. In turn, he used *Lok Adalat* to translate his vision of socio-economic reform by making it a vehicle for reform-oriented adult education. He made the adjudicatory occasions into educational ones, both through actual decisions and plain preaching on many themes—family planning, ill-effects of over-consumption of alcoholic drinks, honesty in credit transactions, civic liberties, irrationality of belief in witchcraft, equality of women, agricultural innovation, etc. Today, the area of about 1,000 villages has witnessed remarkable socio-economic changes partly fostered and sustained by this kind of didactic adjudication. In this sense, perhaps more has been achieved by mobilization of lay justice for development than by insistence on adoption of professional justice, as is illustrated by the state's abortive attempts at formalizing village justice through the statutory nyaya panchayats (*see* Baxi, 1976[a]: 1979).

The *Lok Adalat* is not an isolated phenomenon, although it may be in several respects, unique. On a lesser scale, quite a few such experiments exist. Moreover, not too dissimilar functions (of promoting welfare, development, status mobility) have been and are being performed by *jati panchayats* (caste dispute institutions) as noted by several sociologists and anthropologists. When they perform such functions, as they increasingly do, both in adjudicatory and other contexts, the *jati panchayats* supplement the role of the state in bringing about social change, although they do so on the basis of caste loyalty and patronage.

It would be misleading to assume the conflicts between state and local legal orders are merely conflicts of *values*: there are also conflicts of interests. Adoption of constitutional values naturally calls for sacrifices of personal or group *interests*, which are clearly not acceptable

to those in position of higher class, status or power. Some would even say that what is spoken of as values are nothing more than rationalization of interests of vested interest groups.

Whatever may be one's views on the latter aspect, one example of conflict of interests is manifested in the decision of some panchayats of the so-called 'denotified' tribes (which were designated by the British masters as 'criminal tribes' as early as 1773, a labelling which persisted for whole groups and a stigma which was removed by the repeal, in independent India, of the Criminal Tribes Act, 1933). A recent study indicates (Simhadri: 1979) that the Yerukulas, a former criminal tribe in Andhra Pradesh, "commit crimes not only to earn their livelihood but also to pay fines and bribes to panchayat and police and a good proportion of their booty in theft and burglary goes towards the maintenance of these agencies". While tribal panchayats ordinarily discourage commission of crimes, Simhadri finds instances where the panchayat itself suggests that a criminal could engage in theft in the ensuing dark days (new moon days) in order "to earn money" to pay fines (p. 124). We have in this kind of situation a clearly antagonistic relation between the SLS and the NSLS. But the antagonism does not appear, as in the case of Maya, to be at the level of values but it exists at the level of *interests*. Ordinarily, theft is discouraged among Yerukulas. But if theft is the only or the best way in which to pay fines to and through panchayats (and the exactions in some situations by the police), the superior interests of the group prevail over that of the interests and values sought to be promoted by the national order and even the SLS. And the very agents of the SLS whose duty it is to uphold its values and interests temporarily become coopted in the NSLS, which obviously serves their material interests better.

Cohn's approach—or generally the cultural approach—is ultimately an aspect of social system perspective toward the NSLS. The actor approach, stressing interests rather than values, is steadfastly pursued in the Indian context by Robert Kidder. Of course, his universe of study is not comparable to Cohn's (Cohn studied villagers in North India. Kidder's focus is on "outlying districts" of Bangalore in South India). But the overall contrast holds. Kidder is certainly correct to question Cohn's assertion that Indians' recourse to the court system of the SLS demonstrates "manipulation", use of courts not "to settle disputes but to further them" (Cohn, 1959: 155). Such a view, according to Kidder (and I agree) misjudges "the importance of

constructive force in social interaction". It also ignores "the opportunity structure which is created by systems of formal adjudication" (Kidder, 1973).

This opportunity structure arises from "the failure of adjudicative ideal". The administration of justice in India is shot through with delays (Kidder notices average delay in civil suits in Bangalore courts in 1967-77 to be 'slightly over 17 years'). Paradoxically, this delay and frustrations attendant upon it, are utilized by the adversaries to wage a war of attrition in which the idea is not so much to win the case but to maximize the opportunities for a substantially favourable compromise, *outside* the SLS, and perhaps mostly through the NSLS. Manipulation of delay is being regarded by those affected as being the "intentional product of a shrewd adversary". To the extent this aspect becomes the folklore of state law systems, the NSLS may well persist as alternate opportunity structures. But the capital point here is that the cultural approach helps us overlook mobilization of state law in the pursuit of material interests and of dominance. (For the recurrence of this theme in a related context of legal anthropology, *see* Sally Falk Moore, 1965-66: 615-24).

Be that as it may, we must also note that the limits of state power, authority and law are not set just by values and interests but also (and perhaps no less decisively) by the level or organization of efforts. Most 'developing' countries are poor, appallingly so, as in the case of India, where a large number of people do not have means of bare subsistence. We immediately perceive that the level of poverty affects adversely the reach of state law and the quality of its justice. Investment in administration of law and justice is not (and probably cannot be) a high priority item in national budgets of poor societies at the very time when they have to resort to the machinery of law to initiate and foster social change. This is one among the many paradoxes of social change in developing societies.

All this means, of course, that there are not enough courts, constables and lawyers—carriers of official-law—in poor societies. Local legal systems naturally persist. Thus, for example, in India (according to one estimate) there are only 183 lawyers per one million of the population as against 507 lawyers in the United Kingdom, 1,595 in the USA, 947 in New Zealand, 638 in Australia and 769 in Canada. Indeed, some areas in India have no lawyers at all; and

inter se distribution of lawyers within India reveals even striking disparities (Galanter, 1968-69:201). As regards the police, in 1971, according to the official estimates, there was one policeman for every 800 persons in India; but the distribution is uneven between the rural and urban centres. The average jurisdiction of a police station is about 200 square miles covering 100 villages and a population of approximately 75,000 persons. It was estimated in 1950s that police stations were, on the average, about 8 miles from any village (Bayley, 1969: 79-80).

The state legal system, pervasive in urban areas, is only slenderly present in rural areas. The low visibility of the state legal system, and its slender presence, renders official law (its values and processes) inaccessible and even irrelevant for people. Other factors (such as the lanuage of the law, which is alien to about 95 per cent of the people) compound the distance between the state's law and the subjects.

Evaluation of the NSLS

Ideological compulsions—leaping before looking—have often led to evaluations which characterize most NSLS as problematic in terms of their justicity (that is, values of due process, reasoned elaboration and substantive justice values). Lack of hard data in relation to the NSLS may be irrelevant to cafeteria or armchair evaluations but it is an obstacle to informed and thoughtful judgment. The latter kind of judgment was arrived at by Professor D.F. Henderson after a close study of the institution of *Choetei* and general conciliation processes in Japan. I quote below the general appraisal in view of the fact that elements of it are often present in most evaluations (of cafeteria variety) of the NSLS:

> . . . the excessive use of conciliation stunts the growth and refinement of the body of rules necessary to sustain 'complex community life; it dulls the citizens' sense of right, essential to the vindication of law. It may also allow old rules and social prejudices which new legislation has sought to abolish, to influence the outcome of disputes; or it may allow a new regime to ignore the law in favour of its new policy . . . In other words, conciliation is neither conservative nor progressive in principle; it is simply unprincipled. It may favour the powerful over the weak, in the name of bargaining; it ordinarily forces the plaintiffs to discount

their claims; it may operate to compromise large scale group interests which might be better handled by forthright reform legislation. In short, conciliation is only an adjunct to, not a substitute for, legal order; and if relied upon excessively, it is not merely nonlegal—it has antilegal results. . . It takes a legal framework to protect the voluntary character of conciliation and if it is not voluntary, conciliation will become in practice simply a standardless use of force (Henderson, 1965: 241).

The foregoing sort of appraisal is common enough in discussions of most NSLS. The basic ideal-typical contrasts between most NSLS and the SLS are that the non-state law and dispute institutions may allow room for "prejudiced" rather than "principled" decisions; the NSLS may be swayed by power differential between parties; that *in some ways NSLS are "antilegal". At this level, the case for* cribbing and even annihilating (if that were ever possible) most 'dysfunctional' NSLS becomes impressive, if not compelling.

But such a comparison needs to be made at the same level. What usually happens is that normative models of the SLS are compared *with the operative models of the NSLS; this "dacoit track" no doubt* yields preferred conclusions. But suppose we check this conclusion with accentuation of different aspects (behaviour rather than value, reality rather than myth) of the SLS.

At the behavioural level, the picture begins to look more or less the same. Are the judicial (and legislative) decisions pre-eminently grounded in "principles" rather than "prejudice"? (Witness the inconclusive controversy over 'reasoned elaboration' and 'neutral principles' in relation to American judicial process). Are the SLS "law-ways" substantially free from "old prejudices" cancelling the objective of social change through law? Do no power differentials between parties affect legal initiations and outcomes? Does not the volume of out-of-court settlements in civil cases, and of plea-bargaining in criminal matters, contrast sharply with the adjudicative adversary ideal? Does not the actually operative Crime Control Model (as against the normative Due Process Model) involve fairly high incidence of "standardless use of force"?

These are, no doubt, big questions; but the outlines of answers, in the available sociological literature, have already begun to point out the great gap between rhetoric and reality, between the proclaimed objectives and dysfunctional results. The lesson to draw from these ongoing explorations is not that there are *no* significant differences between the NSLS and the SLS *but that these differences are of degree rather than of kind.*

Conclusion

Intelligent appreciation, rather than wholesale denigration, of the NSLS and their creative realignment with the SLS provides one way to redeem the present crisis of the ILS. Such an endeavour will imaginatively seek to harness the creative jural energies of the people towards tasks of dispute handling and conflict processing in directions desired and favoured by the Constitution; it will protect and promote those institutions which are reinforcive of constitutional conceptions of just social order. Moreover, in the face of antagonistic relations between the SLS and the NSLS such an endeavour will seek to identify and redress such deficiencies of the SLS as generate popular preference for recourse to the antagonistic NSLS. In the process, the aberrations and arrogance of the makers and operators of the ILS ('We know the right questions, we know the right answers and we can change India *all by ourselves*, because we are always in the right as compared with the people of India', may also abate. Only when this happens can we expect a juristic renaissance in India; until then all we would have is a permanent crisis of the Indian legal system.